

CHOATE HALL &amp; STEWART LLP

September 27, 2007

Brian A. Davis, P.C.  
(617) 248-5056  
bad@choate.com

BY HAND AND ELECTRONICALLY

The Honorable Douglas P. Woodlock  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
John Joseph Moakley U.S. Courthouse, Suite 4110  
One Courthouse Way  
Boston, Massachusetts 02210

Re: John Hancock Life Insurance Company, *et al.*  
v. Abbott Laboratories  
U.S.D.C. (Mass.) Civil Action No. 05-11150-DPW

Dear Judge Woodlock:

I write briefly on behalf of plaintiffs John Hancock Life Insurance Company, *et al.* (collectively, "John Hancock"), to address one point raised in Abbott Laboratories' ("Abbott") September 26, 2007 letter to Your Honor concerning the Seventh Circuit's recent decision in River East Plaza, LLC v. The Variable Annuity Life Company, 2007 WL 2377383 (7th Cir. Aug. 22, 2007). At the September 19 hearing, Your Honor granted John Hancock permission to address the River East Plaza decision.

In arguing that John Hancock "completely ignores [the liquidated damages] prong of the Court's analysis" (Abbott letter at 2), Abbott misconstrues the seminal holding of River East Plaza; *i.e.*, that a contractual provision, such as Section 3.3(b) of the Research Funding Agreement, which provides an "alternative form[] of performing the obligations under the contract" *should not* be analyzed under a "liquidated damages framework." *Id.* at \*3, 5. Section 3.3(b) unambiguously gives Abbott an alternative to expending the entire Aggregate Spending Amount over the four-year Program Term and the "subsequent year" without breaching the parties' Agreement, and directly incentivizes Abbott not to waste the parties' combined R&D dollars by allowing Abbott to retain most, but not all, of the unspent funds. Because "the sole purpose" of Section 3.3(b) *is not* "to secure [Abbott's] performance" of the Agreement, the reasoning of River East Plaza holds that Section 3.3(b) cannot reasonably be construed as an "unenforceable penalty." *Id.* at \*4.

Letter to Hon. Douglas P. Woodlock  
UNITED STATES DISTRICT COURT  
September 27, 2007  
Page 2

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "B. A. Davis", with a stylized flourish at the end.

Brian A. Davis

cc: Jeffrey I. Weinberger, Esq. (by electronic and regular mail)  
Peter E. Gelhaar, Esq. (by electronic and regular mail)  
Michael S. D'Orsi, Esq. (by electronic and regular mail)

4255258.1